IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.Misc.No.581-MA of 2006
Date of Decision: November 21, 2006

State of Haryana

.....Appellant

VERSUS

1.Deepak @Khillu son of Ajit;

2.Samunder Singh son of Malle Ram and

3.Suresh son of Lachhman, all residents of Village Dalyan Pana, Dighal, District Jhajjar.

.....Respondents

CORAM:- HON'BLE MR.JUSTICE K S GAREWAL
HON'BLE MR.JUSTICE R S MADAN

PRESENT: Mr. PS Sullar, Deputy Advocate General, Haryana.

R S MADAN, J.

By this order we propose to dispose of Criminal Misc.No.581-MA of 2006, which has arisen out of the judgment dated 10-04-2006 rendered by the Additional Sessions Judge, Jhajjar in a Sessions case No.9 of 2000/2004 whereby he acquitted all the accused under Sections 398 and 401 of the Indian Penal Code by giving them the benefit of doubt.

In brief, the facts of the case are that Suresh Kumar SI/SHO, Police Station Beri was present with the Police party at Bhagalpuri Chowk where he was talking to one Jai Narain son of Nathu Ram, resident

of Beri when he received a secret information that near poultry farm situated at Jahajgarh near culvert of a minor, four young persons armed with weapons were attempting to rob the people passing through that place by blocking the road with the help of wooden logs. An Esteem car bearing registration No.DL-5C/2390 was with them which was also parked near the place. In case raid was conducted, the accused could be apprehended red-handed. SI-Suresh Kumar, PW8 arranged a raiding party and associated Jai Narain son of Nathu Ram. They reached the spot in the government jeep and saw four young men standing on the road. The road was blocked by them with the help of wooden logs and an Esteem car was also parked on the eastern side of the road. One of the young man out of the four signalled the Police jeep to stop, upon which SI/SHO Suresh Kumar asked his driver to stop the jeep. He with the help of remaining police officials, managed to nab three young boys while one of them had managed to escape taking benefit of darkness. The persons, who were arrested, had disclosed their names as Deepak @ Khillu, Samunder Singh and Suresh and they disclosed the name of the person, who managed to escape as Rambir, resident of Village Dighal. Their personal search was conducted. Accused-Deepak was found to be in possession of an iron rod. Accused-Samunder Singh was having a DBBL gun and two cartridges while accused-Suresh was having a countrymade pistol. All these weapons were taken into possession vide various memos after the sketches of the weapons were prepared. The rough site plan of the place of recovery was prepared. Formal FIR No.178 dated 15-09-1999 under Sections 398/401 of the Indian Penal Code read with Section 25/54/59 of the Arms Act was registered against the accused. In due course of time, the scaled site plan was got prepared from Ranbir Singh,

Patwari, PW6.

After recording the statements of PWs and completion of the investigation of the case, challan against the accused was presented in the Court of Illaqa Magistrate.

On appearance of the accused before the Court of the learned Additional Sessions Judge, Jhajjar, the accused were charged for the commission of offence under Sections 398/401 of the Indian Penal Code. The aforesaid charges were read over and explained to the accused, to which they pleaded not guilty and claimed trial. In the meantime, the accused were released on bail.

During the pendency of the trial, accused-Samunder had jumped bail and was declared proclaimed offender. He was produced in custody in Court on 31-8-2005. Accused-Deepak had jumped bail and was declared proclaimed offender. It was brought to the notice of this Court that he was confined in District Jail, Rohtak in some other case. He was summoned through production warrants. In this way, accused-Deepak, Samunder and Suresh faced the trial in custody.

To prove its case, the prosecution relied upon the testimony of 9 witnesses i.e. PW1-Ranbir Singh, Ahlmad; PW2-Constable Sat Parkash; PW3-ASI Ram Avtar; PW4-SI Maha Singh; PW5-HC Rattan Singh; PW6-Ranbir Singh, Patwari; PW7-Rambir, Superdar; PW8-Inspector, Suresh Kumar, Investigating Officer and PW9-E.HC Dilbag Singh and closed the case of the prosecution.

After the case of the prosecution was closed, the statements of the accused were recorded under Section 313 of the Code of Criminal Procedure, in which the entire incriminating evidence was put to

them, to which they denied and pleaded false implication.

No evidence was led in defence.

On appraisal of the evidence, the learned Additional Sessions Judge, Jhajjar did not find favour with the prosecution version and acquitted the accused by giving them the benefit of doubt.

Heard.

The learned trial Court while dealing with the prosecution version was of the view that the case property in the form of gun and pistol was not produced. The two weapons produced in the Court, were of some different case as is evident from the statement of E.HC Dilbag Singh (PW9). Iron rod which had been produced in the Court, was not produced in sealed parcel and it was stated by PW9-Dilbag Singh that such type of rod was easily available in the market. Similarly, the statement of the Investigating Officer-PW8, Suresh Kumar is to the effect that he did not find any incriminating evidence against the accused persons being active members of the gang of thieves. Resultantly, offence under Section 401 of the Indian Penal Code was dropped. According to the prosecution, the occurrence had taken place on Beri Jahajgarh road but it was testified by Ranbir Singh, Patwari-PW6, who prepared the scaled site plan that the site plan pertains to Village M.P. Majra and he further admitted that the Village M.P. Majra does not fall at Jahajgarh-Beri road. It falls on Jhajjar-Jahajgarh road, which is a separate road. The learned trial Court found that scaled site plan was prepared by the Patwari Halqa, PW6 without visiting the place of occurrence. The only independent witness Jai Narain, who was associated by the police party, was not examined on the ground that he had been won over. There is also no cogent evidence that the accused had attempted to rob

any particular person. Even if, it is presumed that they had placed wooden logs on the road and signalled the police jeep to stop, it does not mean that they attempted to commit robbery on the police officials. The DBBL gun, which was alleged to have been recovered from accused-Samunder Singh, was not at all produced in the Court. An iron road without any seal was produced, which cannot be treated to be a part of the case property. Compliance of Section 154 of the Code of Criminal Procedure was also not made as per which the information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced in writing by him or under his direction and be read over to the informant and every such information whether given in writing or reduced in writing, shall be signed by the person giving it but the same has not been signed by the person.

In this view of the matter, vide order dated 10-4-2006 passed by the learned Additional Sessions Judge, Jhajjar, the accused were given the benefit of doubt and acquitted.

Learned State counsel for the appellant was unable to convince us that the learned Additional Sessions Judge, Jhajjar misconstrued, mis-interpreted the prosecution evidence and has perversely recorded the findings of acquittal.

Accordingly, no ground for leave to appeal is made out and the same is hereby dismissed.

(R S MADAN)
JUDGE

(K S GAREWAL)
JUDGE

November 21, 2006
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